

SENATE BILL

No. 8

Introduced by Committee on Budget and Fiscal Review

January 27, 2003

An act to amend Sections 461 and 666 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 8, as introduced, Committee on Budget and Fiscal Review. Sentencing: burglary and petty theft.

Existing law provides the penalty for 2nd degree burglary is imprisonment in a county jail not exceeding one year or in the state prison.

This bill would provide that where a person commits 2nd degree burglary by entering a retail establishment during business hours with the intent to commit petty theft, the punishment would be imprisonment in a county jail not exceeding one year, provided however, that if the person has a prior conviction for a violent or serious felony as described in Section 667.5 or 1192.7, the offense is punishable by imprisonment in a county jail not exceeding one year, or in the state prison.

By requiring convicted persons to be imprisoned in a county jail rather than in the state prison, this bill would impose a state-mandated local program.

Existing law provides that if a person has been convicted of certain offenses, has been imprisoned therefor, and is subsequently convicted of petty theft, then the conviction for the petty theft is punishable by imprisonment in a county jail not exceeding one year, or in the state prison.

This bill would provide instead, that the punishment would be imprisonment in a county jail not exceeding one year. This bill would also provide that if the person has been convicted of one of those certain offenses that is a serious or violent felony, or otherwise previously been convicted of a violent or serious felony, then a subsequent conviction for petty theft would be punishable by imprisonment in a county jail not exceeding one year, or in the state prison.

This bill would provide that the changes in punishment made by the bill would apply to all persons not yet sentenced on the date the act becomes effective.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 461 of the Penal Code is amended to
- 2 read:
- 3 461. Burglary is punishable as follows:
- 4 ~~1.~~
- 5 (a) Burglary in the first degree: by imprisonment in the state
- 6 prison for two, four, or six years.
- 7 ~~2.~~
- 8 (b) Burglary in the second degree: by imprisonment in the
- 9 county jail not exceeding one year or in the state prison.
- 10 (c) *Where a person commits second degree burglary by*
- 11 *entering a retail establishment during business hours with the*
- 12 *intent to commit petty theft, the offense is punishable by*
- 13 *imprisonment in a county jail not exceeding one year, provided*
- 14 *however, that if the person has a prior conviction for a violent or*
- 15 *serious felony as described in Section 667.5 or 1192.7, the offense*
- 16 *is punishable by imprisonment in a county jail not exceeding one*
- 17 *year, or in the state prison.*
- 18 SEC. 2. Section 666 of the Penal Code is amended to read:



1 666. Every person who, having been convicted of petty theft,
2 grand theft, auto theft under Section 10851 of the Vehicle Code,
3 burglary, ~~carjacking, robbery,~~ or a felony violation of Section 496
4 and having served a term therefor in any penal institution or having
5 been imprisoned therein as a condition of probation for that
6 offense, is subsequently convicted of petty theft, then the person
7 convicted of that subsequent offense is punishable by
8 imprisonment in the county jail not exceeding one year, ~~or in the~~
9 ~~state prison~~ *provided, however, that if the prior conviction was for*
10 *a violent or serious felony as described in Section 667.5 or 1192.7,*
11 *or if that person in addition has been previously convicted of a*
12 *serious or violent felony, the offense is punishable by*
13 *imprisonment in a county jail not exceeding one year, or in the state*
14 *prison.*

15 SEC. 3. The changes in punishment made by this act apply to
16 all persons not yet sentenced on the date this act becomes effective.

17 SEC. 4. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

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